

EXHIBIT 2

Hempton v. Pond5, Inc., et al.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE
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GORDON HEMPTON,

Plaintiff,

-against-

POND5, INC., A Delaware Corporation;
and POND5 USER CKENNEDY342, A
Corporation or Individual of Type
Unknown,

Defendants.

CASE NO.: 3:15-CV-05696-DWC

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126 East 56th Street
New York, New York

August 16, 2016
9:10 a.m.

DEPOSITION of 30(b)(6) THOMAS CRARY - VOL. II
before Melissa Gilmore, a Shorthand Reporter and
Notary Public of the State of New York.

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1 Q. When you say not typically, are
2 there instances in which you do?

3 A. Absolutely. To be honest, I
4 couldn't tell you what percentage of the time
5 we would tell them we modified your tags or
6 not. I'm guessing probably not that much if
7 it's like one tag away, if it just seemed off
8 topic, but that's more of a -- you know, my
9 experience interacting with the team than, you
10 know -- I haven't done hours of curation
11 myself, so.

12 Q. Are there also instances in which
13 you add tags?

14 A. Not really. I mean, I can't say it
15 never happens, but most of the time we don't
16 have the time to do that, so we send it right
17 back to the contributor.

18 Like I said, these come in batches
19 of hundred to a thousand, so usually you know
20 right off the bat these tags are just missing,
21 we need to send this whole batch back for
22 retagging. So I think that's probably the
23 predominant situation is either the tags look
24 good and it's fine or the tags are not so good
25 and we need to send it back.

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1 Q. And you talked about performing
2 rights. What did you mean by that?

3 A. So I think that mostly applies to
4 the music side, not much on the sound effects
5 side, but those are organizations that, you
6 know, they group licensees together for
7 tracking and monetization of back-end royalties
8 for performing performances, for live
9 performances.

10 Q. And so you're thinking of ASCAP or
11 BMI, that kind of thing?

12 A. Yes, exactly.

13 Q. You also made reference to releases.
14 What did you mean by that?

15 MR. ALTENBRUN: Objection, beyond
16 the scope.

17 A. This is more on the side of, you
18 know, photos or video or visual content where
19 we look for a variety of different releases,
20 such as model releases. So if there's a
21 visually identifiable person in it, it needs to
22 be released by the person that their likeness
23 can be included in the commercial production.

24 Same thing with property. If you're
25 taking a photograph of someone's house or the

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1 Coke sign, for instance, you know, that's all
2 property owned either considered to be
3 third-party IP or someone's physical property
4 that they have rights to.

5 Q. Are you also looking at copyright
6 releases in that context?

7 A. Copyright releases. So in the
8 case -- probably not, frankly. If there's a
9 copyright issue, they wouldn't -- it wouldn't
10 be allowed on our site.

11 So I can't think of a situation
12 where someone has uploaded a copyright release.

13 Q. Well, I guess the question is, say
14 someone is uploading a video, do you -- for
15 example, is there a review as to whether or not
16 the contributor had the rights to the copyright
17 to the video?

18 A. I'm not sure what you're thinking
19 of. Like what would they upload? Give me more
20 context here.

21 Q. Let's use a photograph. So I take a
22 photograph of a model, and I'm a photographer.
23 I may own the copyright to that photograph, and
24 then there's a model release that goes with
25 that.

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1 metadata in any way?

2 A. Not that I'm aware of.

3 Q. Did the scraping process capture, to
4 your knowledge, all of the available metadata
5 associated with the Ckennedy files?

6 A. I've been doing a fair amount of
7 work on this, more than I would like, so I've
8 learned a lot about it. One thing I've learned
9 since doing this particular exercise is,
10 depending on the extraction tool you use, you
11 sometimes will get different -- different
12 fields that can come up.

13 So I've tried four or five different
14 tools, and I've gotten different results in
15 different -- from the different tools, which is
16 interesting.

17 Q. Can you identify, to the best of
18 your recollection, the tools that you've used?

19 A. I really can't. If you do a Google
20 search for EXIF data or metadata extraction
21 tools, you'll get a bunch of Google results.
22 My developers and myself have tried three or
23 four different versions, mostly just via that
24 Google search approach.

25 The one that we used here is the one

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1 that we have built into the site. This is the
2 same information that you would normally
3 extract from the file upon upload.

4 Q. Built into the site. Are you
5 talking about the Amazon Web Services site
6 or --

7 A. Built into the Pond5 site. So
8 Amazon Web Services hosts our content. Our
9 production site, so where the code sits, is
10 hosted actually by a different company, and
11 that's the extraction tools built into that
12 production site.

13 Q. What company is that?

14 A. Rimmu Hosting, R-I-M-M-U.

15 Q. I'm just going to -- we have done
16 that Google search, and I'm just going to
17 identify a couple and see if they refresh your
18 recollection.

19 A. Sure.

20 Q. And if they don't, they don't.

21 There is an EXIF Data Viewer, did
22 you use that tool?

23 A. I think this is going to be a
24 fruitless exercise. I remember one we did
25 yesterday was Mediaarea.net. That was one we

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1 there?

2 A. The first file is on line 9,787, and
3 it looks like it's QP050473, surf rock, jetty
4 splash.

5 Q. And are you aware, as you sit here
6 today, that that QP identifier is a product
7 identifier for Quiet Planet content?

8 A. I'm seeing the QP, and I'm now
9 suspicious.

10 Q. I will represent to you if you do a
11 Google search on those QP numbers that you end
12 up at the Quiet Planet website.

13 A. Okay.

14 Q. Is that a process that Pond5 has
15 undertaken at any time, meaning Google
16 searching the metadata fields for who might be
17 the owner of the Ckennedy content?

18 MR. ALTENBRUN: Objection, beyond
19 the scope and lack of foundation.

20 A. I have been to Mr. Hempton's
21 Soundtracker website. I haven't looked at the
22 file extensions that were included in his
23 files.

24 Q. Okay. At any time did Pond5 do a
25 Google search on the file names as uploaded and